

**THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH**

WRIT PETITION No. 21963 OF 2005

10-04-2006

Between:

Andhra Pradesh State Financial Corporation, Hyderabad,
rep. by its Managing Director.

.....Petitioner

And

Commissioner of Income Tax, Hyderabad-1 and another.

.....Respondents

**THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
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ORDER : (Per Hon'ble Sri Bilal Nazki, J)

Petitioner is The Andhra Pradesh State Financial Corporation and challenge in this writ petition is with respect to computation of interest on refund. Petitioner also prays for a direction to respondents that interest on refund of tax should be calculated from 01.4.1995 till 21.12.2004.

The facts as narrated in the writ petition are that for the assessment year 1995-96, the Corporation filed its return of income admitting a total income of Rs.4,02,33,374/-. On such admitted income, the Corporation paid advance tax of Rs.1,32,62,000/- as required by law. On a portion of income, there was also deduction at source during the relevant accounting year and the amount so deducted was Rs.23,200/-. On the admitted income, the Corporation also paid self-

assessment tax of Rs.64,39,518/- on 20th of November 1995. The Deputy Commissioner of Income-tax, who was the Assessing Officer, scrutinized the return, heard the assessee and passed an order of assessment under Section 143 (3) of the Income-tax Act (for short 'the Act'), 1961 on 27.3.1998 determining the total income as Rs.8,97,04,920/-.

Against that assessment order, the Corporation filed an appeal before the Commissioner of Income-tax. The appeal was disposed of on 20th of November 1998. The appellate authority reduced the total income from Rs.8,97,04,920/- to Rs.4,23,89,550/-. Against the appellate authority's order, both the assessee and the Income-tax Department went for further appeal to the Income-tax Appellate Tribunal (for short 'the Tribunal'). The Tribunal dismissed the Department's appeal vide its appellate order dated 30th of January 2003 for the assessment year 1995-96. It disposed of the assessee's appeal on 31st of March 2004. The Assessing Officer gave effect to the appellate order of the Tribunal vide her modification order dated 21.12.2004. The Tribunal determined the total income of the petitioner-Corporation for the assessment year 1995-96 as nil. The case of the petitioner is that since the taxable income for the assessment year 1995-96 was nil, various taxes paid by

the Corporation for that assessment year had to be refunded to it. The Assessing Officer, by an order dated 21st December 2004, determined the refund payable to the assessee. She also determined the interest payable on such refund in terms of Section 244-A of the Act as under:

	<i>Rs.</i>
<i>Total income</i>	<i>nil</i>
<i>Tax on above</i>	<i>nil</i>
<i>Tax already paid by the assessee:</i>	

	<i>Rs.</i>
<i>TDS</i>	<i>23,200</i>
<i>Advance tax</i>	<i>1,32,62,000</i>
<i>Self assessment tax</i>	<i>64,39,518</i>
<i>Regular tax and adjustments of other refunds</i>	<i>40,30,029</i>
	<i>-----</i>
<i>Total :</i>	<i>2,37,54,747</i>

Refundable
2,37,54,747
Less: Interest U/s.234-C
4,58,738

Refundable
2,32,96,009
Less : Refund of regular tax already issued in January 1999 *16,56,361*

*Refund of regular tax
already issued on
27.10.2003*

33,83,346

50,39,707

*Principal amount of refund
due to assessee*

1,82,56,302

*Add: Interest u/s.244-A from
1.4.2004*

*to 31.12.2004 (as the
assessee has
either*

*not made the above claim
in the return of income for
the
assessment year 1994-95
(typing mistake for 1995-
96) or during the course of
assessment proceedings
(therefore) the delay in
claiming of the deduction is
attributable to the
assessee and therefore,
the assessee has been
allowed*

*interest u/s.244-A from the date of
order of the ITAT)*

5,31,754

Net Refundable :

1,87,88,056

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Facts are not in dispute. The controversy raised by the petitioner-Corporation is that the calculation of interest on refund made by the 2nd respondent was not in accordance with the statutory provision contained in Section 244-A of the Act. According to the learned Counsel appearing for the petitioner-Corporation, interest under Section 244-A of the Act on refund of Rs.1,82,56,302/- ought to have been calculated for periods of 9 years to 9 ½ years, but the 2nd respondent granted such interest for a small period of only 8 months.

Counter is filed, in which the facts are not disputed. However, it is stated that aggrieved by the order of the Commissioner of Income-tax (Appeals), the petitioner preferred an appeal to the Tribunal and in the course of the appellate proceedings, the petitioner raised an additional ground stating that they have added back Rs.2,54,88,756/- as income representing the unclaimed balance of Credit Guarantee Commission amounts and since the petitioner had filed declarations under 'Kar Vivad Samadhan Scheme of 1998' offering to tax all amounts received towards Credit Guarantee Commission as income for the year of receipt itself, it was contended that the inclusion of Rs.2,54,88,756/- again as income for the year 1995-96 would amount to double assessment of the

same amount. The Tribunal set aside the assessment and remanded the matter back to the Assessing Officer with a direction to verify the claim of the assessee and allow the same. After verification as to whether the amount included was offered in 'Kar Vivad Samadhan Scheme', the assessee's claim was found to be correct. Subsequently, the amount of refund was quantified and having noted that the assessee has raised the additional ground for the first time before the Tribunal and it was not claimed either in the returns or during the course of assessment proceedings, therefore, the interest was allowed under Section 244-A of the Act from the date of the order of the Tribunal, as the delay in claiming the deduction as a result of its admission under 'Kar Vivad Samadhan Scheme', was attributable to the assessee.

We have heard learned counsel for the parties in detail.

The petitioner moved an application in terms of Section 244-A (2) of the Act before the Commissioner of Income-tax, seeking interest from 1st April 1995 to 31st December 2004. He passed an order on 19th August 2005, rejecting the claim of the petitioner. The reasons given for rejection of the claim of the petitioner, by the Commissioner, are

contained in para 7 of the order as under –

“The assessee paid advance tax, self-assessment tax, etc. on its own volition after returning its total income at Rs.4,02,33,374. If the assessee’s income has been changed to ‘nil’ in view of its assessments for the other years and at the instance and pursuant to the decision of the ITAT, it cannot be held that the I.T.Department withheld the refund so as to compensate for the delay by issue of interest. The assessee chose to admit income of Rs.4,02,33,374 and paid tax commensurate to it. The assessee changed its stand much later and that stand has the support of the ITAT. That, however, does not render the IT Department responsible for the delay. The delay has to be attributable to the assessee. In the circumstances, the question of granting interest to the assessee u/s 244A prior to the decision of the ITAT does not arise.”

By going through the order of the Commissioner, it is manifest that the claim of the petitioner to interest has been rejected mainly on the ground that the delay in refund was attributable to the assessee. Therefore, granting of interest to the assessee under Section 244-A of the Act prior to the decision of the Tribunal was not permissible. The learned counsel appearing for the petitioner, however, submits that whatever the return is filed by an assessee, it is the job of the officials of the I.T. Department to see whether the income returned is correct or not. The scheme of the Income-tax Act is such that ultimately everything depends upon the assessments and

not on the returns. Even if a person declares a higher income, he cannot be deprived of refund and interest on the ground that he committed a mistake by declaring his income higher than the actual income. He further submits that Section 244-A was introduced in the Act with effect from the assessment year 1989-90 and under Section 244-A (1)(a), interest on refund which arises out of TDS or advance tax, has to be calculated from the 1st day of April of the relevant assessment year up to the date on which the refund is granted. Therefore, the interest should have been calculated from 1st of April 1995, as the assessment pertain to 1995-96. He claims that he is entitled to interest on Rs.23,200/- and Rs.1,32,62,000/- from 1.4.1995 to 21.12.2004. He also claims that he is entitled to interest on refund of Rs.49,71,102/- for the period from 20th November 1995 to 21st December 2004 under Section 244-A (1)(b) of the Act.

Section 244-A of the Act is reproduced hereunder –

“244 A : Interest on refunds :-

- (1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :-

- (a) where the refund is out of any tax collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 143 or on regular assessment;

- (b) in any other case, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation : -- For the purposes of this clause, “date of payment of tax or penalty” means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

- (2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is

payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(3) Where, as a result of an order under sub-section (3) of section 143 or section 144 or section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.”

The provision lays down that interest is payable from 1st day of April of the relevant assessment year to the

date on which the refund is granted. But Section 244-A (2) lays down that if the proceedings resulting in the refund are delayed for the reasons attributable to the assessee, the period for the delay so attributable shall be excluded from the period for which the interest was payable. It is not disputed that the petitioner was entitled to refund in terms of the order of the Tribunal only, and Tribunal allowed his plea only on the ground which was raised as additional ground in the appeal. This ground was not even agitated during the appeal and the additional ground raised was –

- “1. The appellant contends that in the facts and circumstances of the case, it is entitled to claim deduction of Rs.10,47,33,454 while computing the taxable income for the assessment year 1994-95 being the amounts refunded to the loanees out of DICGC amounts collected from them in the past years.
2. It is contended that since the appellant follows cash system of accounting and since the refunds have been made in the year ended 31-3-1994, the refunds should be allowed as deduction in the year of refund just as the payments were taxed as income in the year of receipt.”

While considering this contention, the Tribunal, on facts, was not even sure whether the petitioner was entitled to any refund, as still certain questions of fact relating to

expenditure had to be decided. Therefore, the matter was remanded back to the assessing officer. The refund was claimed on the ground that a deduction of Rs.10,47,33,454/- should be treated as expenditure as it was the amount that had been refunded to the loanees out of DICGC amounts collected from them in the past years. The Tribunal was of the view,

“Under these circumstances, the expenditure i.e. payments made by the assessee to DICGC or the amounts returned to the loanees consequent to the resolutions passed by the Board at its Meeting on 16.3.1994 consequent to a letter from Small Industries Development Bank of India dt.15.4.1993 delinking of refinance from credit guarantee commission should entitle the assessee to claim expenditure on this count.”

Basically these were facts, which the Department was not supposed to know unless they were brought to its notice. Certain facts were not brought to the notice of the Income-tax authorities and for the first time those facts were brought to the notice of the Tribunal when Tribunal was hearing the appeal, therefore, the delay in refund could not be attributable to the Department. In these circumstances, the delay was attributable to the petitioner and therefore, in our view, the Commissioner's order cannot be faulted.

For these reasons, we do not find merit in this

petition and it is accordingly dismissed. No costs.

(BILAL NAZKI, J)

10th April 2006

(G.CHANDRAIAH, J)

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